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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

20 Cr. 0468 (RMB)

5 ROBERT HADDEN,

6 Defendant.

7 -----x

8  
9 October 21, 2020  
12:38 p.m.

10 Before:

11 HON. RICHARD M. BERMAN,

12 District Judge

13  
14 APPEARANCES (via telephone)

15 AUDREY STRAUSS

Acting United States Attorney for the  
Southern District of New York

16 BY: JESSICA R. LONERGAN

17 MAURENE R. COMEY

LAURA E. POMERANTZ

18 Assistant United States Attorneys

19 CLAYMAN & ROSENBERG

Attorneys for Defendant

20 BY: WAYNE ERVIN GOSNELL, JR.

21 ISABELLE KIRSHNER

Attorney for Defendant

22 - also present -

23 Erica DePalma, U.S. Pretrial Services (New Jersey)

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(Teleconference established)

THE CLERK: Judge, we have all the parties and the court reporter. We don't have Pretrial Services on, however.

THE COURT: We don't have any Pretrial Services Officer, not New York nor New Jersey?

(Pause)

THE CLERK: I don't think so, Judge.

THE COURT: Well, that is a little bit of a surprise. Chelsea, will you know if they join the call?

THE LAW CLERK: Only if it is someone that we've had on before and I see their number.

THE COURT: I see.

THE LAW CLERK: Christine, who is it supposed to be? I will send them an email.

THE CLERK: It was my understanding it is Erica DePalma. Is that correct, Mr. Hadden?

THE DEFENDANT: Yes, that's correct.

THE COURT: Is that New York or New Jersey?

THE CLERK: That's New Jersey, Judge.

THE DEFENDANT: That's New Jersey.

THE COURT: I see. OK.

Is there a New York person, too?

THE CLERK: There was a New York person back on November 17th. However, that was not an individual who had a supervisory role in the case.

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1 THE COURT: OK. All right. Then we'll just wait  
2 another minute and see if the New Jersey person comes on.

3 (Pause)

4 THE COURT: So this is Judge Berman again. It would  
5 be very helpful if everybody who is on this call would mute  
6 their phones unless and until such time as they are going to  
7 speak as part of the conference.

8 Any further contact from Pretrial Services?

9 THE CLERK: Chelsea was going to email. Go ahead.

10 THE LAW CLERK: I haven't heard anything yet.

11 THE COURT: Well, then I think we should begin and  
12 we'll note the absense of Pretrial Services both from New York  
13 and New Jersey. I don't understand it but so be it.

14 One issue that I wanted to address at the outset is  
15 the issue of counsel, and Mr. Hadden has new counsel. I think  
16 he sought either CJA or Federal Defenders. And he submitted a  
17 financial affidavit in support, which I think is the form  
18 that's often used or normally used. But that form is not  
19 adequate for my purposes, which is to accurately reflect all  
20 income, assets and expenses in a clear and verified format. So  
21 this one that has been submitted -- and it may be how other  
22 people have done it as well, it's not the way I do it.

23 So I want a -- and particularly when we're talking  
24 about someone who has had or has, you know, significant  
25 resources as having been a medical doctor, having owned a home

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1 that is valued at somewhere around a half a million dollars,  
2 and also is someone who, as has been indicated in prior  
3 conferences, had made a transfer of I don't know if it is  
4 several hundred thousand dollars or some amount to one of his  
5 children to buy a house, etc. I think we need a more  
6 professional and up to date financial affidavit.

7 So, I'm going to want one that is signed and  
8 notarized, sworn to under oath, and also is accompanied by a  
9 certified financial report prepared by an accountant, or  
10 something like that, who knows Mr. Hadden's economic situation,  
11 and that should cover the last couple of years prior to the  
12 commencement of this lawsuit. So, I want a full and accurate  
13 picture of Mr. Hadden's finances and assets and of any  
14 financial transfers that have taken place in the last, say, two  
15 or three years as well.

16 THE CLERK: Judge, this is Christine. I'm sorry to  
17 interrupt, but I believe we have the Pretrial Services Officer,  
18 Erica DePalma, on the line. Is that correct?

19 OFFICER DePALMA: Yes, Christine. This is Erica  
20 DePalma with Pretrial Services in New Jersey. Thank you.

21 THE COURT: Good to have you.

22 OFFICER DePALMA: Sorry, Judge.

23 THE COURT: Yes. So Ms. DePalma, we were just going  
24 over Mr. Hadden's application for appointed counsel, and I've  
25 been saying that I need more information rather than a

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1 back-of-the-envelope kind of information with respect to that  
2 financial affidavit before I can review it and determine  
3 whether he is entitled to appointed counsel.

4 And, Ms. Kirshner, you can explain, to the extent that  
5 that needs to be explained, go over that with Mr. Hadden, and  
6 I'm going to have to do a do-over, as it were, accompanied by a  
7 certified financial statement which covers his finances over  
8 the last three years.

9 MS. KIRSHNER: Your Honor, could we -- I'm just  
10 thinking, maybe if we could use the kind of financial affidavit  
11 that is used in connection with the preparation of a  
12 presentence report, would that be adequate for you?

13 THE COURT: You know, it sounds good. What I really  
14 wanted is I want a detailed picture of his assets and  
15 liabilities and income and expenses, certified, over the last  
16 three years. So whatever form -- and that, of course, would  
17 all be sworn to and under oath. Just that.

18 So what they do is, Pretrial Services, I'm not sure  
19 exactly, but if it accomplishes the objective that I want to  
20 accomplish, I'll take a look at it. But pretty much what I  
21 want is a statement of assets and liabilities and income and  
22 expenses detailed over the last three years, covering his  
23 positions for the last three years.

24 So, once I get that, I'll take a look and I'll try and  
25 make a determination about whether he qualifies for appointed

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1 counsel. But for the moment, I prefer that current counsel  
2 remain in the picture. I don't know how long it will take you  
3 all to put that together, but that is what I'm looking for.

4 Anybody have any questions about that?

5 (Pause)

6 So the second issue is I just want to hear from  
7 Pretrial Services how Mr. Hadden is doing with respect to the  
8 terms and conditions of his release. If we could hear --

9 OFFICER DePALMA: Yes, Judge. To my knowledge, there  
10 has not been any issues with Mr. Hadden. He calls in as  
11 directed and provides requests when needed, and we have not had  
12 any issues with him.

13 THE COURT: Right. But he has other obligations as  
14 terms and conditions of his bail, one of which is to have a  
15 mental health evaluation, I think, and also weekly therapeutic  
16 counseling. There are other specifics. That's what I'm really  
17 trying to find out, if the specifics are being accomplished,  
18 and I mean that specifically.

19 OFFICER DePALMA: Judge, I have spoken with his  
20 psychiatrist and psychologist. He's meeting over the phone.  
21 I'm sorry, I have --

22 (Inaudible)

23 OFFICER DePALMA: I'm sorry, Judge?

24 THE COURT: Did you mention a name, and I couldn't get  
25 it? We might need to spell it for the court reporter.

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1 OFFICER DePALMA: OK. I just have to get into his  
2 case right now. But I have spoken with the psychiatrist and  
3 psychologist. They are meeting on Zoom. The psychiatrist is  
4 every three months and the psychologist is weekly.

5 THE COURT: And could you give us the names --

6 THE REPORTER: I'm sorry. Is this Pretrial Services  
7 who is speaking? You didn't identify yourself.

8 OFFICER DePALMA: Yes.

9 THE REPORTER: All right. Thank you.

10 OFFICER DePALMA: Sorry.

11 THE COURT: And could you give us the names --

12 MR. GOSNELL: Your Honor, this is Wayne Gosnell for  
13 Mr. Hadden. We would ask that any names of psychiatrists or  
14 therapists, that if the Court needs that information, that that  
15 be provided by Pretrial Services. It is essentially not public  
16 because just in the same way that we've had the issue of not  
17 having the suretors be public, it is our expectation that this  
18 would subject those individuals to targeting by members of the  
19 public who have an agenda, and it really just isn't appropriate  
20 under the circumstances here.

21 THE COURT: Yes. I'm really -- I understood that with  
22 respect to the suretors. I don't understand it with respect to  
23 professionals, and so over your objection, I'm going to ask for  
24 the names of those individuals from the Pretrial Services  
25 Officer.

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1 OFFICER DePALMA: Sure, Judge. Susan Powers is his  
2 psychologist, and the psychiatrist -- I'm just trying to get  
3 his information -- Dr. Marantz.

4 THE COURT: Can you spell it?

5 OFFICER DePALMA: M, as in Michael, a-r-a-n, as in  
6 Nancy, t, as in Tom, z.

7 THE COURT: OK. And in terms of the psychologist,  
8 there have been weekly meetings since I imposed --

9 OFFICER DePALMA: These are -- yes, Judge. These are  
10 telehealth sessions so they are done over the phone.

11 THE COURT: And are there any other aspects of bail  
12 that you are familiar with that are not being -- anything  
13 that's not being complied with?

14 OFFICER DePALMA: No, Judge.

15 THE COURT: OK. So the other -- another issue that I  
16 wish to deal with, which has come up, which is the issue of  
17 documents that have been discussed in one or more of our  
18 conferences so far. There are also documents referred to in  
19 some instances in terms of transcripts of, for example, plea  
20 hearings in Mr. Hadden's state court case and also sentencing  
21 hearing, and I will get more specific about those documents in  
22 a moment.

23 There has been a request from the media -- in  
24 particular, The New York Times has asked for those documents,  
25 or documents which have made it to me either by request or



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1 by -- request by me or that have been the subject of other  
2 proceedings in which there is, you know, disagreement or -- and  
3 so those are the documents which I am going to address at this  
4 time.

5 There are one or two, by the way, documents that came  
6 up in the course of our prior conferences. One is related  
7 to -- one is termed a Molineux motion. It was my understanding  
8 at the conference in which that was discussed that the defense  
9 counsel was going to make available to me at least the defense  
10 counsel opposition or submission with respect to that motion.  
11 I never got it. So, I'm still looking for that. And if I'm  
12 not mistaken, defense counsel was also going to send over a  
13 copy of the indictment in state court. I don't know if I got  
14 that either. I don't think so.

15 So if Ms. Kirshner or Mr. Gosnell could locate those  
16 materials? If you look through the transcript, you'll find  
17 that they were specifically discussed, and I think one or both  
18 of you volunteered to send them over to me and for whatever  
19 reason it just didn't happen yet. I would love to see those.

20 Is that all right?

21 MR. GOSNELL: Your Honor, this is Wayne Gosnell.

22 I suppose the issue here is it somewhat depends on how  
23 the Court intends to rule on our motion not to file these  
24 documents publicly. At the moment, the Molineux motion and  
25 certainly the other documents that were --

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1 THE COURT: Mr. Gosnell, I think you've got the wrong  
2 issue, frankly and respectfully. If you look through the  
3 transcript of our proceedings, you will find either you and/or  
4 Ms. Kirshner said that they would send those documents to me,  
5 and that has not happened. And so I would like you to review  
6 the transcripts and then send that to me along with the  
7 indictment. So what I do with it we'll get to in a minute, but  
8 I was surprised, frankly, that I didn't receive those documents  
9 by now.

10 So is that your understanding, what my request is? My  
11 request is that you look through the transcripts and see if you  
12 did make that commitment and, for whatever reason, you didn't  
13 follow through on that commitment. OK?

14 MR. GOSNELL: This is Wayne Gosnell.

15 Yes, we will do that.

16 THE COURT: OK. So for purposes of this ruling, we'll  
17 hold at least the Molineux aside and until I get it and read  
18 it. But, also, when you look through the transcripts, you'll  
19 find out, which I'm sure you have by now, that there was  
20 discussion about those documents already. And so what I'm  
21 concerned about is that we haven't had any substantial  
22 proceedings here yet, we're just sort of getting organized, but  
23 the one substantive issue that has been discussed on several  
24 occasions is bail. And the issue of bail is of serious concern  
25 to me since I'm essentially supervisor in a way -- not the

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1 direct supervisor, that would be Pretrial Services, but I am in  
2 a way the assessor of whether the bail conditions are working  
3 and appropriate, and it is in that context that I have asked  
4 for and for the most part received these other documents.

5 So, I had requested documents from the New York State  
6 court proceeding, the plea transcript and the sentencing  
7 transcript, as well as a copy of the State court plea  
8 agreement. I did receive those documents via email on  
9 September 19. In the email -- I think this was from  
10 Ms. Lonergan -- she wrote that while the two transcripts are  
11 publicly available, the plea agreement and the email were not  
12 made part of the public record in the State case, and, as such,  
13 she wrote it is the parties' preference that at least the plea  
14 agreement and the email not be publicly docketed. I am going  
15 to address those documents in about a minute from now.

16 By letter dated September 29, defense counsel has  
17 indicated that docketing the New York State court materials  
18 would bring about additional adverse pretrial publicity for  
19 Mr. Hadden and violate his Sixth Amendment right to a fair  
20 trial by an impartial jury. Close quote. That's the  
21 September 29, 2020 defense letter.

22 Counsel acknowledges that the New York State  
23 transcripts and indictment are publicly-filed documents and  
24 that the information contained in something called the Risk  
25 Assessment Instrument was repeated during the New York State

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1 sentencing proceedings.

2 And with regard to the plea agreement and the email,  
3 defense counsel states that, "The nonpublic nature of those  
4 documents is based upon the practices of the New York County  
5 District Attorney's Office. We leave it to" -- from the  
6 defense: "we leave it to that Office to explain its practices  
7 and why. In addition to our arguments, these documents should  
8 remain non-public."

9 And then by letter dated October 1, 2020, the  
10 government states -- this is a quote -- "To the extent the  
11 Court relied on the publicly-available documents from the  
12 prior" -- that is to say, the New York County District  
13 Attorney's Office" -- proceedings making a judicial  
14 determination in the instant case, the government does not  
15 object to the docketing of those documents in this case. As to  
16 the non-public documents, because they do not appear to be  
17 relied upon in any judicial decision in this case, the  
18 government respectfully submits that those materials are not  
19 judicial documents subject to public docketing at this time."

20 So, here's the issue. Of course, everybody recognizes  
21 that the public has a right of access to criminal judicial  
22 proceedings and judicial documents. The cite is Nixon v.  
23 Warner Communications, 435 U.S. 589, a 1978 case. Also, I'm  
24 relying on Lugosch, L-u-g-o-s-c-h, v. Pyramid Company, 435 F.3d  
25 110, a Second Circuit decision from 2006. And so we know in

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1 these essentially balancing situations where the rights of  
2 privacy sometimes on one hand and the rights of the public to  
3 know and have the information on the other hand, we do a  
4 balancing test. That is why you've made the submissions, the  
5 lawyers have, that you've made and why we've discussed these  
6 documents at various proceedings up until now. And so these  
7 are the documents that I have been balancing in my mind the  
8 issues of potential privacy. Frankly, I didn't see much that  
9 was private in those documents, given the nature and the venues  
10 in which they were discussed and analyzed.

11 But I balance that on the one hand and the public's  
12 right to know on the other hand as to the physical safety and  
13 privacy interest of any innocent third parties as well as those  
14 rights of defendant that may be harmed by disclosure of the  
15 material should weigh heavily in the Court's balancing equation  
16 in determining what should remain sealed and what should be  
17 redacted. So another authority I'm referring to is New York  
18 Times Company, 828 F.2d 110, a Second Circuit case from 1987.

19 I'm also of course aware of and reliant on federal  
20 statutes. One is 18 United States Code, Section 3142(g), which  
21 states that: "The judicial officer shall, in determining  
22 whether there are conditions of release that would reasonably  
23 assure the appearance of the person as required and the safety  
24 of any other person and the community, shall take into  
25 account" -- this is the bail statute -- "shall take into

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1 account the available information concerning, among other  
2 things, the history and the characteristics of the person,  
3 including his character, physical and mental condition, family  
4 ties, employment, financial resources, length of residence in  
5 the community, community ties, past conduct, history relating  
6 to drug or alcohol abuse, criminal history, and record  
7 concerning appearance at court proceedings and also whether at  
8 the time of the current alleged offense or arrest he was on  
9 probation or parole or on such other release pending trial,  
10 sentencing, appeal, or completion of sentence for an offense  
11 under federal, state or local law."

12 And, finally, that statute section I am referring to  
13 concludes: "Also, the nature and seriousness of the danger to  
14 any person or the community that would be posed by the person's  
15 release."

16 So, this is the bail statute. We know that bail has  
17 been set by the Magistrate Judge. We know that I am concerned,  
18 because we've had very extensive discussions about whether the  
19 conditions of bail have been met, including in my introductory  
20 remarks today to find out from the Pretrial Services Officer  
21 whether in fact those conditions, which, incidentally, to which  
22 I made a modification at one of the more recent conferences.  
23 So, these documents are of paramount concern and importance in  
24 their contents to me in connection with the bail statute.

25 There is another statute which I've already relied

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1 upon, which is 18 United States Code, Section 3142(c)(3), which  
2 states that: "The judicial officer may at any time amend the  
3 order to impose additional or different conditions of release."  
4 And that is a statute I relied upon when I introduced the  
5 requirement that there be weekly mental health counseling as a  
6 condition of bail.

7 So, those are the premises for which I reviewed the  
8 documents at issue today.

9 The government contends that there is no indication  
10 that the Court has relied on any of the public documents in  
11 these proceedings, nor have the parties relied upon the  
12 nonpublic documents in arguments made to the Court. I take  
13 objection with that statement by the government. I think that  
14 it is very clear from the transcript, again, my interest in  
15 the -- and my role with respect to the bail conditions and the  
16 rather detailed discussions that we've about some of these very  
17 documents.

18 So in determining whether the bail conditions are and  
19 were sufficient, I reviewed the New York State plea transcript,  
20 the New York State sentencing transcript, the Risk Assessment  
21 Instrument, the New York State plea agreement, and an email  
22 between Assistant District Attorney Gaffney, G-a-f-f-n-e-y, and  
23 defense counsel Kirshner, K-i-r-s-h-n-e-r, and Gosnell,  
24 G-o-s-n-e-l-l. These materials are and were clearly relevant  
25 to the Court's assessment of whether the bail conditions are

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1 sufficient as the materials concern, among other things, the  
2 history and characteristics of the defendant as well as his  
3 criminal history and I underscore, among other things, factors  
4 that the Court must, and I have, analyzed under 18 United  
5 States Code, Section 3142(g).

6 Now, I started with mentioning the Molineux papers,  
7 and I do hope you all go back to the transcript and see where  
8 those were discussed. My ruling today will not directly  
9 concern the Molineux papers because I never got them, and I  
10 will review them once they are received and I will determine  
11 whether or not they are useful and connected to any of the  
12 legal purposes for which we review such materials.

13 In the New York State plea transcript, the Assistant  
14 District Attorney Millendorf, M-i-l-l-e-n-d-o-r-f, stated that:  
15 "Prior to going on the record today" -- this is the plea  
16 transcript that you should refer to to see if the quote is  
17 correct, dated February 23, 2016. Millendorf stated that:  
18 "Prior to going on the record today, the defendant" -- and the  
19 defendant in that case was also Mr. Hadden, the same as the  
20 defendant in this case -- "and the people have signed three  
21 copies each, which we are filing and serving at this time, of a  
22 written waiver of a right to appeal, a written plea agreement,  
23 and the previously agreed upon" -- and then there is a sort of  
24 a pause. "The defendant did also sign a copy of the written  
25 order from the Office of Professional Medical Conduct



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1 discussing the surrender of his medical licensure in New York  
2 and his agreement not to seek such licensure" -- that's his  
3 medical license -- "in another state. So we are not providing  
4 the Court with a copy of the OPM plea agreement, but we will be  
5 providing the Court with the plea agreement in writing and a  
6 written waiver of the right to appeal, and defense counsel also  
7 has copies of these and I'm handing those up now."

8 That's in the state court proceeding back in 2016.

9 Also, in the New York State plea transcript, defense  
10 counsel Kirshner stated: "I just -- I would like to  
11 incorporate by reference, although I'm not going to provide to  
12 Court, I received an email from Ms. Daphne, dated February 11,  
13 2016, which goes to greater detail as to the crimes that will  
14 be covered by the plea." That's found in the February  
15 (inaudible) 2016 plea transcript.

16 THE REPORTER: Your Honor, hi. This is the court  
17 reporter. Somebody is making some noise that is stepping over  
18 you and I am losing some of your words.

19 If I could once again please implore everybody, except  
20 for your Honor, to please put your phones on mute because it is  
21 blocking out some of the words that you are saying.

22 THE COURT: OK. So that's a fair point by the court  
23 reporter, that we have a lot of people on the line, and if you  
24 all could mute your phones at such times as you are not  
25 speaking as part of the hearing. That is a good point.

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1 In the New York State transcript, sentencing  
2 transcript -- I was just talking about the plea transcript, but  
3 now I'm referring to the sentencing transcript -- the Assistant  
4 District Attorney Millendorf stated: "We've shown that the  
5 SORA Risk Assessment Instrument to the Court beforehand and  
6 defense counsel."

7 Then the following colloquy occurred among counsel and  
8 the Court -- this is the state court -- about the contents of  
9 the Risk Assessment Instrument. And ADA Millendorf stated  
10 that, "The points assessed are as follows." So the Risk  
11 Assessment document is a calculation of various points ascribed  
12 to the offense conduct, which is me summarizing, and those  
13 points get added up to determine what the sex offender status  
14 of in this case Mr. Hadden should be. And so he's saying --  
15 Millendorf is saying that, "The points assessed are as follows.  
16 And as far as the corroboration that goes to each of these sets  
17 of points, each of these points are covered in both the  
18 indictment and the plea itself. So, there's no need to submit  
19 additional evidence or documentation at this time."

20 And he goes on to say, "There are 25 points here  
21 assessed for category number 2." And then he says, "Sexual  
22 intercourse, deviate sexual intercourse, or aggravated sexual  
23 abuse." that is the category he's discussing for which 25  
24 points have been assessed.

25 He goes on to say that, "30 points assessed in

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1 category number 3 for the number of victims, which is assessed  
2 here as three or more, because this category is assigned to the  
3 number of victims covered in the accusatory instrument."

4 And he goes on to say, "There are 20 points assessed  
5 in category number 7, Relationship with Victim, a category  
6 defined as stranger or established for purpose of victimizing  
7 or professional relationship. And there are 15 points here  
8 assessed for category 14. And then being released without  
9 supervision, and that brings us to a presumptive category of  
10 two with a total of 90 points." So this is the Assistant  
11 District Attorney describing how the Risk assessment at this  
12 stage, anyway, at the stage I've stopped quoting him, is 90  
13 points.

14 The next to speak is Defense Counsel Kirshner, and she  
15 says -- and this is not to me, this is to the state court  
16 judge: "Your Honor, at this time, as per our agreement, we're  
17 going to move for a downward departure from the finding so that  
18 the Court can come to a finding of level one, which was a zero  
19 to 70." So level 1 is the, as I understand it, the lowest  
20 level of supervision of a sex offender, and the maximum number  
21 of points for that category is 70. Mr. Millendorf had already  
22 said that they were at 90. So she's making an application and  
23 she goes on to say: "As we discussed, that finding is based on  
24 the fact that in some ways the fact that he" -- Mr. Madden --  
25 Hadden, rather, excuse me -- "not being placed on probation is

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1 working to his detriment, and everyone agrees that a  
2 probationary subpoena is not necessary in this case, that  
3 whatever occurred occurred in his office and not out among the  
4 general public and that we have now two years of -- almost two  
5 years of the pendency of this case, almost four years since the  
6 incident that one of the victims addressed without any  
7 incident. And with those three factors in mind, and with no  
8 objection from the District Attorney's office, the Court has  
9 agreed to a downward departure to a level one."

10 So, this is the application and motion with respect to  
11 what level of supervision will be required as a result of the  
12 sentence in that case.

13 Then the Court steps in and says: "Is that correct,  
14 there's no objection by the people?"

15 And ADA Millendorf says, in response to the Judge's  
16 question: "We agree, the Risk Assessment Instrument does not  
17 take those factors into account and defer to the Court's  
18 decision."

19 And Ms. Kirshner then says: "Is that a yes?"

20 And Mr. Millendorf says: "Yes."

21 Then the Court goes on to say: "The defendant will be  
22 sentenced as a level one sex offender."

23 And you can find that in the March 29, 2016 sentencing  
24 transcript at page 8, lines 21 through 24.

25 The email reviewed by the Court dated 2/11/16, which

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1 was from ADA Gaffney to defense counsel Kirshner and Gosnell,  
2 among other things, the email mentions an alleged abuse that  
3 occurred in either April or May of 2011 that was brought to the  
4 attention of the District Attorney's Office in November 2015  
5 that was encompassed as one of the offenses covered by the plea  
6 agreement entered into by the defendant in New York State  
7 court.

8 So, those pretty much I think encompass the documents  
9 which I have received, and I have done the aforementioned  
10 balancing in my analysis and here's what I conclude. As the  
11 New York State documents were relied upon in conducting and/or  
12 reviewing the bail review and as these documents were either  
13 publicly filed either in state court -- well, or discussed and  
14 referenced in the publicly-filed documents that I mentioned,  
15 then I concluded, on balance, that there does not appear to be  
16 any persuasive physical safety and/or privacy interest of  
17 innocent third parties or of the defendant, Mr. Hadden, that  
18 will be harmed by disclosure. And in that balancing, I've  
19 concluded that the public's right to know, to have access, is  
20 paramount at least with respect to the documents I'm talking  
21 about.

22 And, consequently, I am going to file on the public  
23 docket these documents -- the New York State -- well, I am  
24 going to file this when I get it -- the indictment, also the  
25 New York State plea transcript, also the New York State

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1 sentencing transcript, also the Risk Assessment Instrument,  
2 also the New York State plea agreement, and also the email  
3 dated February 11, 2016 between ADA Gaffney and defense counsel  
4 Kirshner and Gosnell.

5 I will hold off, because I haven't gotten or reviewed  
6 the so-called Molineux papers, and I will reserve decision  
7 until such time as I get a chance to review them. I hope that  
8 will be in the next day or two from defense counsel.

9 By the way, with respect to the documents that I've  
10 just mentioned, my plan would be to redact email and/or home  
11 addresses that may be contained in any of those documents from  
12 public filing.

13 So that's the issue I wanted to go over for today.  
14 There may be other issues -- well, there certainly are issues  
15 that you all may want to raise and discuss, and I'm happy to do  
16 it.

17 So, anything from the government that you wish to  
18 raise today?

19 MS. LONERGAN: Yes, your Honor. Briefly, I would like  
20 to raise two issues.

21 First, returning to the very first issue in this  
22 conference, which is -- has to do with appointment of counsel  
23 for the defendant, the government just wanted to know for the  
24 Court that the government, with respect to conflicts, if and  
25 when it comes time to appoint counsel, on the CJA panel the

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1 government is only aware of conflicts with Debevoise and with  
2 Paul Weiss, and then the government is not aware of any  
3 conflicts with the Federal Defenders.

4 THE COURT: OK. That is helpful. So it's Debevoise  
5 and Paul Weiss, did you say?

6 MS. LONERGAN: That's correct, your Honor.

7 THE COURT: OK. So, OK, that leaves it wide open  
8 pretty much. The list is rather extensive but that's very  
9 valuable and helpful to know.

10 MS. LONERGAN: And then the second -- the second thing  
11 is just a request from the government, which is that the  
12 government takes its responsibilities and obligations to notify  
13 everyone of the conference and the dial-in information for the  
14 conference prior to the conference. And so this is just a  
15 request from the government that if it is possible to provide  
16 the dial-in information 24 hours in advance of the conference,  
17 or to tell us now that the dial-in information will always be  
18 the same, that would be very helpful -- I'm going to say 24  
19 hours; it could be 24 hours or more -- just so that we're not  
20 reaching out to plaintiffs' counsel and to the other victim  
21 notification services, you know, just the evening before the  
22 conference. So that is just a request from us going forward,  
23 if we could have a little bit more notice of the dial-in  
24 information so that we could make sure we timely comply with  
25 our obligations.

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1           THE COURT: Yes. So that's more than reasonable. I  
2 don't know, and I'm reluctant to say that -- well, maybe  
3 Chelsea can help us out with that. I don't know if it is  
4 always going to be the same security code number, but I'm very  
5 glad that you raised the topic. It's very important to us that  
6 we notify the persons who are -- the persons who need to be  
7 notified, in addition to the litigants and counsel, of course.  
8 The top of my list is the victims, who are called victims. And  
9 so we will certainly accommodate you in that regard.

10           I'm going to ask -- well, I won't do it now. I don't  
11 want to put Chelsea on the spot to say whether it is always the  
12 same security code, but we'll get back to you about that. And  
13 we certainly are happy to give you at least 24 hours notice.  
14 And you can always call chambers and ask for Chelsea or  
15 Christine if you haven't gotten that notification and you  
16 think -- and you know there is something coming up, we'll  
17 certainly make it available to you right then and there.

18           MS. LONERGAN: Understood, your Honor. And we thank  
19 you very much. And those were the only two points that the  
20 government wished to raise at this conference besides what the  
21 Court has already addressed.

22           THE COURT: Just by way of information, were you able  
23 to make a notification to the victims of today's proceeding?  
24 Did you have the security code adequately in advance for that  
25 purpose?



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1 MS. LONERGAN: Yes, your Honor. We received it, say,  
2 mid or late yesterday afternoon. As soon as we received it, we  
3 circulated it and put it in a variety of places that we put it.  
4 So we hope that the victims were -- they should have all at  
5 least -- you know, we started the notification process  
6 yesterday before the end of the day, but, you know, I just -- I  
7 think a little bit more notice would be helpful for them. You  
8 know, we -- our office has a practice or can send out  
9 individual letters or individual emails as well as notifying  
10 the victims through counsel, but if we're going to do that,  
11 send out letters or emails, then we need at least -- I think  
12 for letters we need a week notice, and then for emails it may  
13 not be a week, maybe we will do it in a couple of days.

14 But I think what makes sense, your Honor, is that  
15 we -- we will keep track of, of course, the conference dates,  
16 they're always in our calendar, and we will -- we will be  
17 responsible for contacting chambers, you know, even a week in  
18 advance to get the information such that we can make sure we  
19 have enough time to notify the victims in all the different  
20 ways that we do.

21 THE COURT: That's great and I appreciate that. We  
22 will absolutely make it our business to tell you what the  
23 security code is. I think for the foreseeable future, by the  
24 way, we will be operating by these telephone conferences. I  
25 think that is almost certainly going to be true for the balance

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1 of 2020. And I think that is even -- I'm sure that's true of  
2 my docket in other cases but particularly I think it's going to  
3 be true here, either, because I don't believe that, because of  
4 the pandemic, that the court or the courtroom is quite ready  
5 for not only the litigants and their counsel but also the  
6 victims to be physically present in, for example, my own  
7 courtroom. So I don't think it would be feasible to do it in  
8 any other way at this time, but that's just a heads up.

9 But I will absolutely guarantee to you that we will be  
10 able to give you security code notification information well in  
11 advance of any conference or hearing or proceeding that --

12 MS. LONERGAN: We appreciate that, your Honor, and,  
13 again, we will also take it upon ourself to contact chambers,  
14 because we know, of course, that everyone is busy and we'll  
15 make sure that we do that. So those were the only issues that  
16 the government wished to raise with the Court today.

17 THE COURT: Do you have any comment on status of the  
18 case in terms of, I don't know, discovery or where things  
19 are -- how things are going in that regard?

20 MS. LONERGAN: Yes, your Honor. So in some sense we  
21 are at the same place, unfortunately, that we were at the last  
22 conference. In light of the counsel situation, defense  
23 counsel, it has been current counsel's position, which we  
24 completely understand, that they don't wish to enter into a  
25 protective order if they're not going to stay in the case

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1 longterm. And so in some sense we have been waiting to resolve  
2 the question of longterm counsel before we can have productive  
3 discussions about a protective order. And in light of the  
4 allegations and the discovery materials in this case, there is  
5 really very little we can produce without a protective order.

6 That said, we are moving forward on doing what we can  
7 do, and so one of the things we have been engaged in with  
8 current counsel on is the privilege review of the seized  
9 materials, and so the government is working to get that  
10 privilege review underway so that once the counsel situation is  
11 resolved, once we have a protective order, hopefully those  
12 privilege reviews will already be underway and then it will  
13 make it so that we can produce, you know, the electronic  
14 materials in a faster way. So we are moving ahead as we can,  
15 and, hopefully, after the Court's conversation today with  
16 defense counsel, we can resolve the counsel situation in the  
17 near future and then we can move forward with conversations  
18 about the protective order and then with producing discovery.

19 THE COURT: That's great. I just got the financial  
20 affidavit with respect to Mr. Hadden I think just in the last  
21 two days or so. So if I had gotten it sooner, I would have  
22 sent up a red flag because I have an issue. But be that as it  
23 may, I think no harm done, we'll get there.

24 And while I have you, one more thing, Ms. Lonergan.  
25 It might have been you who mentioned in one of our proceedings,

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1 perhaps on September 25, that you had located a copy of the  
2 indictment and that you were going to send that to me. I  
3 think --

4 MS. LONERGAN: Yes, your Honor. I believe that we  
5 have it. I will confirm with my co-counsel, but I believe that  
6 we have the state indictment. And as soon as we locate it, we  
7 will -- we can send it to chambers. We will send it by email,  
8 copying defense counsel.

9 THE COURT: Great. Thank you very much.

10 OK. So, defense counsel, did you want to say  
11 anything? Make any --

12 MS. KIRSHNER: No, your Honor. We will consult with  
13 Mr. Hadden, and get you back with the financial affidavit as  
14 soon as we can.

15 THE COURT: OK. Any idea? I won't, you know, hold  
16 you to it but --

17 MS. KIRSHNER: I'm assuming he is going to have to go  
18 to an accountant and get the statement. I don't know how one  
19 accomplishes a notary these days, but I guess we can figure  
20 that out.

21 THE COURT: Yes, OK. So as soon as you can -- well,  
22 obviously, you are interested in getting it done soon as well.

23 MS. KIRSHNER: Right.

24 THE COURT: OK. And if you could send me the  
25 documents that you mentioned that you would send, if you could

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1 do that before the end of the week, that would be great.

2 MR. GOSNELL: Yes, sir.

3 THE COURT: OK. I think that's about it.

4 So, let's see. Assuming that the information, I'm  
5 guessing, would be prepared and ready, do you think,  
6 Ms. Kirshner, within two weeks, three weeks at the most?

7 MS. KIRSHNER: I would guess, Judge. I have no idea.

8 THE COURT: OK. So, Chelsea or Christine, Christine,  
9 how about a date two weeks from now or so?

10 THE CLERK: Yes, Judge.

11 THE COURT: What dates would that be? It could be a  
12 little bit -- with Election Day, it is going to be --

13 THE CLERK: Judge, how is November 10th at 11:30?

14 MR. GOSNELL: Your Honor, this is Wayne Gosnell.

15 I'm actually scheduled to have an oral argument in the  
16 Appellate Division that day. If we could have it a different  
17 day, I would appreciate it.

18 THE COURT: OK.

19 THE CLERK: Judge, how is November 9 at 12:30?

20 THE COURT: Is that a Monday?

21 THE CLERK: It is.

22 THE COURT: I would prefer, if you could, November 11,  
23 if we've got something?

24 THE CLERK: It is a court holiday, Judge. It is  
25 Veterans Day.

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1 THE COURT: Oh. And what about the 12th? Is that a  
2 weekday?

3 THE CLERK: The 12th is a Thursday, Judge, 9:30.

4 THE COURT: Yes. November 12, 9:30. Is that  
5 agreeable to everybody?

6 MS. KIRSHNER: Yes, Judge.

7 MR. GOSNELL: Yes.

8 THE COURT: Good. All right --

9 MS. LONERGAN: Yes, your Honor. This is Jessica  
10 Lonergan. Yes for the government.

11 THE COURT: OK. Is there an issue or application with  
12 respect to speedy trial that we need to deal with?

13 MS. LONERGAN: Yes, your Honor.

14 At this time, the government would move to exclude  
15 time under the Speedy Trial Act from now until November 12th.  
16 This will allow the defendant to work out the question of his  
17 representation, which is necessary for proceeding forward with  
18 the case, and also will allow the parties to continue to engage  
19 in conversations regarding any sort of pretrial disposition,  
20 should that be pertinent at this time.

21 THE COURT: OK. Thank you.

22 I'm going to find, under 18 United States Code,  
23 Section 3161, that the request for adjournment, joined in by  
24 both sides, is appropriate and warrants exclusion of the  
25 adjourned time from speedy trial calculations. I further find

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1 that the exclusion is designed to prevent any possible  
2 miscarriage of justice, to facilitate these proceedings,  
3 including resolution of the issue of defense counsel, and to  
4 guarantee effective representation of and preparation by  
5 counsel for both parties, and, thus, the need for exclusion and  
6 the ends of justice outweigh the interests of the public and  
7 the defendant in a speedy trial pursuant to 18 U.S.C., Section  
8 3161(h)(7)(A) and (B).

9 So, unless that's it, Christine, if you could call me  
10 after we hang up from this call?

11 THE CLERK: Yes, Judge.

12 THE COURT: We are adjourned for today. Thanks,  
13 everybody. Thanks for your help and thanks for Probation from  
14 New Jersey for being here.

15 MR. GOSNELL: Thank you, your Honor.

16 MS. LONERGAN: Thank you.

17 MS. KIRSHNER: Thank you, your Honor.

18 (Adjourned)  
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